

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS DIVISION

EMMA LISA RODGERS, as Parent and
Natural Guardian of S.R.,

Plaintiff,

v.

Civil Action No.: 2:18-cv-00123-JPB

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Now comes the Plaintiff by and through her attorney, Wesley W. Metheney, and alleges for her Complaint:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this medical malpractice negligence action filed herein pursuant to the Federal Tort Claims Act (FTCA), 28 USC §1346 et. seq., and involves the conduct of agents, employees and representatives of Pendleton Community Care, Inc., a federally supported health center, and an agency of the Defendant, United States of America.

2. Venue herein is appropriate as Pendleton Community Care, Inc., is a federally supported health center and is engaged in the business of providing reasonably prudent healthcare within the State of West Virginia, and the negligence and deviations from acceptable medical standards of care alleged herein were committed at Pendleton Community Care, Inc., a facility within the State of West Virginia in the Northern District of West Virginia; namely, Franklin, Pendleton County, West Virginia.

3. Plaintiff, Emma Lisa Rodgers, as Parent and Natural Guardian of S.R., (hereinafter referred to as "Plaintiff") is a citizen of the United States and is a resident of West Virginia, residing in Franklin, Pendleton County, West Virginia.

PROCEDURAL REQUIREMENTS

4. On or about February 23, 2018, Plaintiff, by and through her attorney submitted an Administrative Claim Standard Form 95, along with a Notice of Claim with Certificate of Merit for consideration as required by the Federal Tort Claim Act, including a Notice of Claim and Certificate of Merit as required by the Medical Professional Liability Act, West Virginia Code §55-7B-*et seq.*, to the appropriate federal agency, the Department of Health and Human Services, for consideration of the sum certain of One Hundred Seventy Five Thousand Dollars (\$175,000.00), all within two (2) years from the date of injuries giving rise to this civil action. A copy of the Administrative Claim along with the Notice of Claim and Certificate of Merit are attached hereto and made a part hereof.

5. On or about March 28, 2018, the United States Department of Health and Human Services, Office of the General Counsel, acknowledged the receipt of Plaintiff's administrative tort claim.

6. The United States Department of Health and Human Services has had Plaintiff's claim for more than six months and has not settled or denied the same. Plaintiff has complied with all conditions precedent under West Virginia Code §55-7B-*et seq.*, and has exhausted her federal administrative remedies under the Federal Tort Claim Act prior to initiating the instant action.

CLAIM FOR RELIEF

7. On or about May 23, 2016, Plaintiff's son, S.R. presented to Pendleton Community Care, Inc., a health center, with complaints of groin pain and tenderness, with pain radiating to his right testicle.

8. Plaintiff's son, S.R. was seen by John King Seegar, M.D., an employee, agent, representative, and/or physician who was working within the scope of his employment at Pendleton Community Care, Inc., a federally funded healthcare center.

9. Plaintiff's son, S.R., was at high risk for right testicular torsion due to the signs and symptoms he exhibited upon examination at Pendleton Community Care, Inc. Despite this high risk, employees, agents, representatives, and/or physicians of Pendleton Community Care, Inc., all of whom were acting within the scope of their employment, did not perform an adequate physical exam, and did not obtain a scrotal sonogram to evaluate the testicular blood flow in order to rule in or rule out the diagnosis of testicular torsion.

10. John King Seegar, M.D., an employee, agent, representative, and/or physician of Pendleton Community Care, Inc., deviated from the standard of care of a reasonably prudent physician when he failed to perform an adequate physical exam, and failed to appropriately order a scrotal sonogram to evaluate testicular blood flow.

11. Defendant, individually and/or through its employees, agents, representatives, and/or physicians, deviated from the standard of care of a reasonably prudent healthcare provider when its employees, agents, representatives, and/or physicians, negligently failed to perform an adequate physical exam, and negligently failed to appropriately order a scrotal sonogram to evaluate testicular blood flow.

12. At all relevant times herein, John King Seegar, M.D., and the employees, agents, representatives, and/or physicians were acting within the scope of their employment relationship with Pendleton Community Care, Inc. Plaintiff asserts that Defendant, Pendleton Community Care, Inc., is liable for the negligent acts of its employees, agents, representatives, and/or physicians under the West Virginia law of *Respondeat Superior*.

13. As a direct and proximate consequence of Defendant's negligence, Plaintiff's son, S.R., languished unnecessarily and incurred unnecessary complications with undiagnosed testicular torsion.

14. As a direct and proximate consequence of Defendant's negligence, Plaintiff's son, S.R. developed testicular torsion, which required the surgical removal of his right testicle.

15. Plaintiff's son, S.R., has incurred medical expenses, and has suffered physical, mental, and emotional pain; a loss of ability to enjoy life; mental anguish; and permanent injury and disability, which losses may continue in the future.

WHEREFORE, Plaintiff, Emma Lisa Rodgers, as Parent and Natural Guardian of S.R., demands judgment against the Defendant in an amount to be determined to adequately compensate for Plaintiff's losses together with prejudgment and post-judgment interest, attorney fees, costs and expenses associated with this action, and such further relief this Court deems just, fair and equitable under the circumstances.

Emma Lisa Rodgers, as Parent
and Natural Guardian of S.R.,
BY COUNSEL



Wesley W. Metheney, Esq.
WV State Bar #2538
Wilson, Frame & Metheney, PLLC
1000 Coombs Farm Drive, Suite 106
Morgantown, WV 26508
(304) 292-9429
(304) 292-9427 Facsimile
wes@wvlegal.com
Counsel for Plaintiff